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BEFORE THE
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON REGULATORY REFORM
U.S. HOUSE OF REPRESENTATIVES
ON THE SUBJECT OF IMPROVING INFORMATION QUALITY IN THE FEDERAL GOVERNMENT
JULY 20, 2005

Madam Chairman, members of the subcommittee, thank you for inviting me to testify on "Improving Information Quality in the Federal Government." I am William Kovacs, Vice President of the Environment, Technology, and Regulatory Affairs division at the U.S. Chamber of Commerce. The Chamber is the world's largest business federation, representing more than three million businesses of every size, sector, and region.

The quality of information that the public relies on when making decisions is a matter of importance to all of us. For me to have confidence that my decisions are sound, I must first have good information. This is just plain common sense. Similarly, members of Congress must be able to rely on their staffs, as well as the Congressional Research Service, to provide good information. In the business sector, tens of billions of dollars are spent to secure good quality information for decision making. Why then shouldn't we expect U.S. government agencies to do the same? That is, why shouldn't we expect government agencies to utilize good information when developing regulations and disseminating information that impacts our lives, businesses, and institutions? After all, since the cost of regulation is estimated at approximately $850 billion annually,[1] the government must assume some responsibility that its mandates are supported by good quality data. Doesn't that make sense?

The Information Quality Act (IQA) seeks to ensure that our government's decisions are based on good quality data. The IQA requires federal agencies to ensure and maximize the quality, objectivity, utility, and integrity of disseminated information and establishes a system whereby interested parties can seek correction of erroneous, disseminated information. The Chamber has been a strong proponent of the IQA, because by utilizing sound data, we can assure ourselves that, as a nation, we are focusing our resources on the problems that need to be addressed, and that our decisions are based on good quality information.

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[1] W. Crain and T. Hopkins, *The Impact of Regulatory Costs on Small Firms,* Report RFP No. SBAHQ-00-R-0027, for the Office of Advocacy, U.S. Small Business Administration (July 2001).

Before turning to the specifics of my testimony, let me address a mischaracterization of the IQA raised by those who oppose its implementation. The IQA has frequently been derided as a tool of industry, which critics claim is being used to conduct an "end-run" around environmental and employee safety regulations. One particularly vociferous critic has even charged that agencies *can't afford the time or expense of revamping [incorrect data]. Correcting the errors would take EPA away from other priorities.* Nothing could be farther from the truth. The IQA is designed to promote integrity in the agency decision making process, and to enhance the accuracy of the data underlying government regulatory decisions. As such, the IQA is a tool for everyone—from businesses to environmentalists to citizens—providing all an equal opportunity to correct faulty government data, and promoting confidence in government decision making. Moreover, because of the difficulties in mounting an IQA challenge, agencies have received very few substantive petitions for correction.[2] Truth be told, it is hard work developing a data quality petition. It requires conducting complex factual and scientific research, obtaining expert opinions, and understanding a myriad of federal regulations. Perhaps this is why so few data quality petitions have been filed. Notwithstanding these number counting exercises, in the end, the data used by federal regulators must be correct; if it is not, then every activity that uses the flawed data will have flawed results.

While the available facts establish that application of the IQA is not overly burdensome on federal agencies, there remain questions about the efficacy of the IQA. Federal agencies have strongly resisted compliance with the IQA. They have taken the position that it is not judicially reviewable and that determinations about the quality of

[2] Some individuals have argued that the IQA is just another tool for regulatory obstruction. But is it? According to FY 2003 annual agency reports sent to OMB, 19 federal agencies and departments received 24,619 requests for correction. This may seem like a burdensome number, however, it isn't. This is because, of these requests, 24,433 were submitted to the Federal Emergency Management Agency (FEMA) for minor revisions and amendments to flood insurance rate maps. FEMA typically receives thousands of such requests year in and year out. With the advent of the IQA, FEMA has processed such requests through its information quality process. As such, the IQA did not stimulate these requests; rather it merely provided an alternative means to address them. Similarly, of the 89 correction requests received by Department of Transportation, 87 concerned individual data items on motor carrier safety reports. The point of these statistics is that excluding FEMA, 18 federal agencies and departments received just 186 requests for correction. OMB deemed 30 to 40 substantive in nature, and only eight influential. Of the eight influential requests for correction, four were denied outright, one was partially addressed through a process change, and three were still pending at the close of the FY 2003 reporting period. In other words, the regulatory process has not come to a grinding halt as a result of being swamped by correction requests submitted by business and industry stakeholders. This fact contradicts those who view the IQA as a tool for regulatory obstruction.

data used by an agency are solely within the discretion of the agency.[3] Simply put, agencies want sole discretion over what data to use, regardless of whether it is the best data, or even correct data.

Because of the importance that the Chamber attaches to the government's use of good quality data, it has undertaken two significant data quality challenges that aim to address agency resistance to the IQA. First, the Chamber has filed a challenge to data disseminated by the United States Department of Health & Human Services (HHS) concerning the relationship between salt and hypertension. This "salt litigation" seeks to establish the judicial reviewability of the IQA. Second, the Chamber has filed a data inconsistency correction request with the United States Environmental Protection Agency (EPA) over numerous chemicals listed in its various databases. The problem is essentially this: depending on which database you look in, you will find vastly different numerical values for the same chemical when these values should be exactly the same. These discrepancies among the databases disseminated by EPA create significant, arbitrary differences in risk assessment outcomes and enforcement activities.

I will briefly discuss each of these important IQA challenges in turn.

SALT LITIGATION

On April 15, 2005, the Chamber filed an Appellate Brief with the 4th Circuit Court of Appeals as part of the Chamber's litigation against HHS. The litigation stems from the agency's denial of the Chamber's IQA petition, which included a request for disclosure of information that the agency relied on in concluding that salt has significant adverse health effects on the general population. HHS denied the petition, as well as a

[3] A June 10, 2002, memorandum from John Graham, Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget to the President's Management Council, discusses the "appeals mechanism" for IQA denials. In the memo, issued at the time most agencies were in the process of developing their IQA Guidelines, Graham states that by agencies asserting in IQA Guidelines that IQA denials are not judicially reviewable doesn't necessarily make it so. Specifically, he states that *agencies should be aware that their statements regarding judicial enforceability might not be controlling in the event of litigation.* Graham goes on to say: *We note, in this regard, that a number of agencies emphasize that their guidelines are not intended to provide any right to judicial review. A few agencies even stress that their guidelines may not be applicable based on unspecified circumstances and that the agency may be free to differ from the guidelines where the agency considers such action appropriate. Regardless of what kinds of litigation-oriented disclaimers the agencies may include, agency guidelines should not suggest that agencies are free to disregard their own guidelines. Therefore, if you believe it is important to make statements that your agency's guidelines are not intended to provide rights of judicial review, we ask that you not include extraneous assertions that appear to suggest that the OMB and agency information quality standards are not statements of government-wide policy, i.e., government-wide quality standards which an agency is free to ignore based on unspecified circumstances.*

See also, Brief for the Appellee at 30, Salt Institute v. Michael O. Leavitt, 345 F. Supp. 2d 589**,** No. 05-1097 (4th Cir., 2004), in which the U.S. Department of Justice states, *It is well established, however, that an agency's reports and other statements lacking the force and effect of law do not constitute final agency action within the meaning of the APA.*

subsequent administrative appeal, insisting that its recommendation on salt intake was scientifically sound while and has steadfastly refusing to make the requested information available, which would allow the public to test the quality of HHS data against the conclusions drawn from it. For this reason, the Chamber, together with the Salt Institute, sued the agency seeking, among other things, to compel release of the information for use in determining the reproducibility of the HHS findings. The lawsuit also a ruling that whether the IQA is judicially reviewable.

The district court dismissed the lawsuit for lack of standing and also held that an agency's disposition of an IQA-based information and correction request is solely within the discretion of the agency. The Chamber is appealing the court's decision, arguing that the IQA creates information rights that become judicially enforceable under the Administrative Procedure Act after there has been final agency action on an IQA petition and appeal. The National Association of Home Builders and the Grocery Manufacturers of America have also filed amicus briefs with the 4th Circuit on this issue.

If the district court's decision is reversed on appeal—as the Chamber believes it will be—the decision will enable parties to seek judicial review of an agency's final disposition of IQA petitions. Conversely, if the Chamber does not prevail in its court challenge to establish judicial reviewability of the IQA, Congress will then either have to provide for judicial review, or accept the contention that federal agencies have sole discretion over the quality of information disseminated to the public and to Congress.

DATA INCONSISTENCY

A second initiative of the Chamber concerns data inconsistencies within databases and models disseminated by EPA. This information is used, for example, in understanding how chemicals are distributed in the environment, in performing risk assessments, and in determining remedial measures for contaminated sites and natural resource damages.

The Chamber, through a request for correction filed with EPA, set forth comparisons of different databases showing that the data disseminated by the agency is inconsistent and faulty. The Chamber also provided evidence demonstrating how the use of such faulty data can cause the unnecessary expenditure of tens of millions of dollars in cleanup costs at a contaminated site. The Chamber suggests that such unwarranted costs aggregated over all the uses to which such data are employed would amount to the unnecessary expenditure of billions of dollars without a corresponding amount of protection for health and safety. In its request for correction, the Chamber cited questionable databases that are used, for example, to assess the environmental impacts of groundwater contamination, leaking underground storage tanks, MTBE in ground water, Superfund hazardous waste cleanups, occupational exposures, and natural resource damage claims. To appreciate the extent of such activities, consider that there are more

than 12,000 active and inactive Superfund sites in the United States. There is little doubt that improving the faulty data could lead to better regulatory decisions; reduce uncertainties; mitigate the prospect of time-consuming litigation; and reduce instances in which scarce resources (time and capital) are wasted addressing the wrong problem, or the right problem in the wrong way.

In its request for correction, the Chamber asked that the erroneous data be corrected. To understand the complexity of the correction request, it is necessary to recognize that there are two types of problems with the disseminated databases and models: [1] there are data inconsistencies among them; and [2] even leaving aside the data inconsistencies, the databases and models contain erroneous data and data of uncertain quality, and being able to assure that all the individual data associated with the databases and models are reliable is a challenging undertaking.

Data inconsistency is relatively easy to understand. It occurs when the same chemical has a different numerical value depending on which database you are looking at. For example, in the ChemFate database, one particular property parameter, K_{ow} for total PCBs,[4] is assigned a value of 7,900, whereas in the Soil and Transport Fate database, the same K_{ow} for total PCBs is assigned a value of 169 million. Both values cannot be right, and the choice of which value to use will ultimately result in vastly different assessments and remediation costs when applied to real world cleanup decisions.

Unfortunately, making the data in the databases consistent is only the first step. The initial data selected must also be reliable. Assuring this latter objective is a more difficult undertaking. To understand the problem in simple terms, imagine that in one database the price of a quart of milk is listed as $10 million and in a second database the price of a quart of milk is listed as $5. Officials responsible for establishing consistency between the two databases meet and subsequently revise the two databases, but now in each database the price of a quart of milk is listed as $15,000. So there is certainly consistency—both databases yield the same answer—but the answer happens to be wrong, as a quart of milk certainly doesn't cost $15,000. Analogously, problems with the data entries in databases and models disseminated by EPA need to be addressed, because many, if not most, of the data entries in the databases are not well established. In fact, one request the Chamber made to its consultant, Cambridge Environmental, was to check EPA's original research to determine if appropriate data values were properly reflected in the databases. The conclusion regarding the several values considered was that information reported in original research was not properly taken into consideration, and this is reflected in incorrect data entries in the disseminated databases and models.

[4] K_{ow} is a coefficient representing the ratio of a compound in octanol (a non-polar solvent) to its solubility in water (a polar solvent). It is generally used, for example, as a relative indicator of a tendency of an organic compound to absorb to soil.

HOW TO ADDRESS THIS PROBLEM

The Chamber believes that addressing this problem requires developing and applying an agreed upon standard methodology for critical review of data—something that, as required by Congress, the National Institute for Standards and Technology does so well and which has also been done by the U.S. Geological Survey. This is why assembling a federal interagency work group to look at the problem would be a desirable course of action, as the intellectual expertise of federal employees who understand this issue is resident collectively among various government agencies. The Chamber contends that such an interagency group could establish an efficient process for forward progress on this matter.

CHAMBER PROVIDED EPA WITH ALL THE CHAMBER'S INFORMATION

This is not a game of "gotcha." Getting the data right is a serious matter with consequences potentially impacting every risk assessment developed by government, every environmental cleanup, and every natural resource damage claim. It will even impact what new chemicals can go on the market. Recognizing the seriousness of this issue, the Chamber provided EPA not only with petitions, but also with the research it had commissioned from Cambridge Environmental, including all attachments and a copy of a key study performed by the U.S. Geological Survey. The Chamber gave EPA all of its research, including simple, clear examples of the data inconsistencies.

EPA'S RESPONSE – A REFUSAL TO CONSIDER THE FACTS

EPA's response to the Chamber's correction request literally ignored the issue raised. EPA responded that:

1. The databases and models in question are individually in conformance with the EPA's Information Quality Guidelines.
2. It temporarily removed one database from its web site, but did not acknowledge any problems.
3. Some databases were superseded by new databases (an action that is not guaranteed to fix the problem).
4. A valid reason for differing values among databases is site-specific conditions.
5. Ownership of databases and models resides with contractors or third parties, and the responsibility for correctly using them and determining the quality of the data therein rests with the user, not EPA.
6. Disclaimers have been attached to, or made in regard to, certain databases and models.

THE CHAMBER SENT EPA'S RESPONSE BACK TO CAMBRIDGE ENVIRONMENTAL FOR REVIEW

Cambridge Environmental found that:

1. Database and model errors cannot be explained away by invoking site-specific conditions. Such conditions account for only a small portion of the variances in the data.
2. Peer review was poor, in some instances, did not occur at all, and in other cases the wrong information was used.
3. Databases that supersede older databases are not necessarily correct, because errors propagate from one information source to another.
4. EPA funded the development of databases and models whose reliability it failed to properly assess.
5. In various ways, EPA disclaimed responsibility for the quality of disseminated information. One such example of disclaimer language is: *This software and the accompanying files are provided as is and without warranties whether expressed or implied. The user assumes the entire risk of using the program*.[5]

In sum, EPA refused to examine inconsistencies among disseminated models and databases; refused to accept responsibility for the quality of the models and databases it disseminates, instead passing accountability to contractors, third parties, or users of the databases and models or issuing disclaimers; and failed to adequately peer review the databases and models. This is both arrogant and irresponsible.

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Madam Chairman, the Chamber can provide Congress with all of the written information developed on this issue that has been communicated to federal government officials, including expert reports and attachments. Moreover, for the record, the Chamber was informed on July 12, 2005, by Igor Linkov of Cambridge Environmental, that the Cambridge Environmental study was submitted to the prestigious journal, *Environmental Science & Technology,* and has been successfully peer reviewed and accepted for publication.

CONCLUSION

In conclusion, the Chamber remains hopeful that the courts will affirm the judicial reviewability of the Information Quality Act in the near future. As to the problems among databases and models that EPA disseminates, the Chamber suggests that the administration or Congress establish an interagency panel that includes the National

[5] Refer to footnote 8 of the Chamber's April 11, 2005 *Request for Reconsideration* of the Chamber's *Request for Correction*.

Institute of Standards and Technology, the U.S. Geological Survey, and other federal agencies that use the disseminated information. The purpose of the interagency panel will be to examine how physical chemical property data associated with disseminated databases and models can be critically reviewed to improve their reliability.

I thank this committee for the opportunity to present the Chamber's views and recommendations about the Information Quality Act and its utility.